

Exhibit B

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE: TERRORIST ATTACKS
OF SEPTEMBER 11, 2001

CASE NO.
03 MD 01570 (GBD)

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New York, N.Y.
April 24, 2014
2:09 p.m.

Before:

HON. FRANK MAAS,

Magistrate Judge

APPEARANCES

COZEN O'CONNOR

Attorneys for Plaintiffs Federal Insurance Company and Tig
Insurance Co.

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1 court filings would be under seal. I mean it seems to me that
2 if a Fifth Amendment issue is resolved then the potential of
3 prejudice to the defendant, the issue of prejudice to the
4 Government is much more easily dealt with.

5 MR. KABAT: Well, the plaintiff wanted to file a
6 motion to intervene in the Oregon criminal case and seek a
7 modification of it, Mr. Seda's Oregon attorney can certainly
8 respond to that.

9 THE COURT: Well, but I am interested in having
10 discovery moved forward. I could simply call the magistrate
11 judge in Oregon and say this may not be a development you
12 thought of or anticipated. Is there a problem modifying the
13 order. He can then consult with the parties and the district
14 judge there. And if it isn't, I don't know that the defendant
15 has a dog in that fight. He has no interest in keeping those
16 documents confidential in the criminal case. It's the
17 Government it seems to me that would have that interest.

18 MR. KABAT: Well, but he also doesn't have the
19 constitutional issues under Hubbell, you know, and --

20 THE COURT: You're talking about his Fifth Amendment?

21 MR. KABAT: Yes.

22 THE COURT: Sure. That it seems to me is the more
23 central question before me. I think I understand the issues.
24 Is there anything either side wishes to add with respect to the
25 application that's before me?

1 defendant to go to the prosecution and ask them whether or not
2 it was covered. And I would imagine at that point it would
3 cause the prosecution to stand up. And I'm kind of curious as
4 to why there is no indication from the prosecutor's office in
5 this case that they had concerns over what we get as
6 representations from the defendant who obviously has an
7 interest. Maybe not a proper interest, but an interest in
8 preventing us from getting the documents.

9 THE COURT: Well, if I conclude, and I said Mr. Kabat
10 has an uphill fight, if I conclude that there's no reason any
11 longer for a stay based on Fifth Amendment grounds, then the
12 only other potential stumbling block is the Oregon magistrate
13 judge order and I don't see -- I guess I'll ask both sides
14 whether they see any problem with my in the first instance if I
15 get that far, calling the magistrate judge and saying would
16 this be a problem? It's fine that the public defender has a
17 view but it seems it's more important what the view of the
18 court that issued the order is.

19 MR. HAEFELE: Your Honor, I can tell you that, on
20 behalf of the plaintiffs, we don't have a problem. Again,
21 Robert Haefele. We don't have a problem with Your Honor making
22 that call. But I would call Your Honor's attention to the fact
23 that the order specifically covers only discovery material and
24 there was a number of items that were trial items that we used
25 and those aren't under the purview of the order and those ought

1 to be produced.

2 THE COURT: Mr. Kabat?

3 MR. KABAT: Well, we did not have that for the trial
4 and I had asked the Oregon federal public defender and he said
5 he could not turn over the trial exhibits to me.

6 THE COURT: Okay. But the question is whether you
7 have a problem with my consulting with the magistrate judge in
8 Oregon.

9 MR. KABAT: Well, I think it would perhaps be helpful
10 if I could have an opportunity just to give them a heads up,
11 you know.

12 THE COURT: Sure. I don't have a problem with that.
13 Okay.

14 MR. KABAT: Would you like me to send you the Oregon
15 briefs first and then you can review that before making the
16 call? I mean in terms of the timing it might be helpful if I
17 send you the post trial briefs.

18 THE COURT: Oh, sure. That's fine. Yes. I mean
19 until I deal with the -- if I decide the Fifth Amendment issue
20 in your favor then the rest of this is academic. If I decided
21 against you then, or your client, then I need to go to the
22 second piece of this, the effect of the Oregon order.

23 MR. HAEFELE: Your Honor, just one last comment. I'm
24 not sure that it plays necessarily on the legalities of it but
25 it certainly I would think play into Your Honor's

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1 THE COURT: Okay? Thank you.
2 MR. HAEFELE: Thank you, your Honor.
3 (Adjourned)
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